

COPY

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES EASON,

Petitioner-Appellant,

v.

LAWRENCE E. WILSON, Warden,
California State Prison,
San Quentin, California,

Respondent-Appellee.

No. 20938 ✓

BRIEF OF APPELLEE

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11 BRIEF OF APPELLEE

12 JURISDICTION

13 The jurisdiction of the United States District
14 Court to entertain appellant's petition for a writ of
15 habeas corpus was conferred by Title 28, United States Code,
16 section 2241. The jurisdiction of this Court is conferred
17 by Title 28, United States Code, section 2253, which makes
18 a final order in a habeas corpus proceeding reviewable in
19 the Court of Appeals when a certificate of probable cause
20 has issued.

21 STATEMENT OF THE CASE

22 A. Proceedings in the state courts.

23 On January 4, 1947, appellant, James Eason, while
24 represented by counsel, pleaded guilty to two counts of
25 robbery; the degree for each offense was found to be first
26 degree, and appellant was sentenced to state prison for the



1 term prescribed by law, the two sentences to run concurrently
2 with each other (CT 4).*

3 Appellant never appealed from the judgment of
4 conviction (CT 2). However, petitions for writs of habeas
5 corpus were filed in the Superior Court of Marin County, in
6 the District Court of Appeal of the State of California, and
7 in the Supreme Court of the State of California (CT 8). The
8 writs were denied without opinion on April 27, 1961, June 20,
9 1961, and August 16, 1961, respectively (CT 9). Substantially
10 the same factual and legal issues presented to the District
11 Court were raised in those petitions.

12 B. Proceedings in the federal courts.

13 On November 11, 1965, appellant filed an application
14 for writ of habeas corpus in the United States District Court
15 for the Northern District of California, Southern Division
16 (CT 1-11). On January 14, 1966, the District Court denied
17 the petition for a writ of habeas corpus on the grounds that
18 there had been no ex post facto application of California
19 Penal Code section 671 so as to make appellant's confinement
20 unconstitutional, and that petitioner's contention that the
21 California Adult Authority is without power to fix his
22 sentence pursuant to his 1947 conviction involves a question
23 of interpreting the indeterminate sentence laws of
24 California -- a matter beyond the scope of federal habeas

25 * As hereinafter used, "CT" refers to the Clerk's Transcript
26 of Record filed in this Court, constituting the United States
District Court Clerk's record on appeal.



1 corpus (CT 28). However, on March 23, 1966, the court
2 below granted petitioner a certificate of probable cause
3 to appeal in forma pauperis (CT 44, 48).

4 SUMMARY OF APPELLEE'S ARGUMENT

5 The District Court did not err in holding that there
6 has been no ex post facto application of California Penal
7 Code section 671.

8 ARGUMENT

9 THE DISTRICT COURT DID NOT ERR IN HOLDING
10 THAT THERE HAS BEEN NO EX POST FACTO
11 APPLICATION OF CALIFORNIA PENAL CODE
12 SECTION 671

13 Appellant's contention in the District Court, repeated
14 here, is that he is confined pursuant to an ex post facto
15 application of California's Indeterminate Sentence Law. The
16 crux of his argument is that California Penal Code section 671,
17 as amended in 1951, now assesses a mandatory life sentence for
18 first degree robbery, whereas when he committed the crime and
19 was sentenced therefor, a mandatory life sentence was not the
20 punishment prescribed by law (AOB 10, 11).

21 The fallacy of appellant's argument is his reliance
22 on section 671 of the Penal Code^{1/} as it existed in 1947.

23 1. "Whenever any person is declared punishable for
24 a crime by imprisonment in the state prison for a term
25 not less than any specified number of years, and no limit
to the duration of such imprisonment is declared, the court
authorized to pronounce judgment upon such conviction may,
in its discretion, sentence such offender to imprisonment
during his natural life, or for any number of years not
less than prescribed." Cal.Pen.Code § 671.

1 That section had been enacted in 1872. As a matter of
2 state law, that portion of section 671, permitting the
3 sentencing court to sentence an offender for any number
4 of years not less than that prescribed by law, had been
5 superseded in that respect by the enactment of the
6 Indeterminate Sentence Act (Penal Code section 1168), which
7 was subsequently passed in 1927, and which specifically
8 provided that "the court in imposing the sentence shall
9 not fix the term or duration as the period of imprisonment."
10 (Italics added.) Cal.Pen.Code § 1168.^{2/} The California cases
11 on the subject unanimously so held. People v. Stratton, 136
12 Cal.App. 201 (1934); People v. Wells, 68 Cal.App.2d 476 (1945).
13 Hence, the 1951 amendment to section 671 (adopted in 1872),
14 to conform said section with the 1927 Indeterminate Sentence
15 Law (Penal Code section 1168), did no more than codify case
16 law which was clearly in existence at the time appellant
17 committed the offense for which he is presently confined.^{3/}

18
19 2. The District Court was incorrect in stating by
20 way of dictum, that the trial court was permitted to fix
a maximum sentence under California Penal Code section 671
at the time of sentencing in 1947 (CT 28).

21 3. "It was not the duty of the trial judge to definitely
22 fix the term of imprisonment . . . as provided by section
671 of the Penal Code.

23 ". . . section 1168, . . . without direct reference
24 to section 671, supra, suspends the operation thereof by
25 necessary implication. The very first sentence provides
that the trial court shall not fix the term or duration
of the period of imprisonment." (Italics added.) People v.
Wells, 68 Cal.App.2d 476, 484-85 (1945).



1 Appellant, contending that the District Court
2 erred in holding that the Adult Authority was empowered
3 to determine and redetermine the length of appellant's
4 sentence, erroneously concludes that he had a vested right
5 to serve only the minimum term of imprisonment, i.e., five
6 years, since the sentencing court did not impose a greater
7 penalty (AOB 18-19). This contention, however, is nothing
8 more than an attack on the Indeterminate Sentence Law itself,
9 which has long been held to be constitutional. Cf. People v.
10 Sama, 189 Cal. 153, 156 (1922); In re Collins, 198 Cal. 508
11 (1926). In addition, the question would not seem to involve
12 a federal question, but rather one of purely local nature:
13 the interpretation of a state sentencing statute aimed at
14 rehabilitation. In re Costello, 262 F.2d 214 (9th Cir. 1958).

15 Appellant has not shown an ex post facto application
16 of sections 671, 1168, or 3020 of the California Penal
17 Code, nor alleged facts to entitle him to federal habeas
18 corpus relief.

19 CONCLUSION

20 For the reasons stated, it is respectfully submitted
21 that the order of the District Court denying appellant's petition
22 for writ of habeas corpus be affirmed.

23 Dated: July 15, 1966.

24 THOMAS C. LYNCH, Attorney General
of the State of California

25 ROBERT R. GRANUCCI,
26 Deputy Attorney General

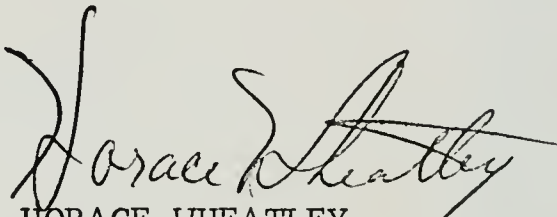
HORACE WHEATLEY,
Deputy Attorney General
Attorneys for Respondent-Appellee.

1 CERTIFICATE OF COUNSEL

2 I certify that in connection with the
3 preparation of this brief, I have examined Rules 18
4 and 19 of the United States Court of Appeals for the
5 Ninth Circuit and that in my opinion this brief is in
6 full compliance with these rules.

7 DATED: San Francisco, California.

8 July 15, 1966

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11 HORACE WHEATLEY
12 Deputy Attorney General
13 of the State of California
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